

**BEFORE THE  
STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

<b>In the Matter of:</b>	)	<b>Docket 03-CRS-01</b>
<b>Proposed Rulemaking Pertaining to</b>	)	
<b>Data Collection for Qualified Departing</b>	)	
<b>Load CRS Exemptions</b>	)	
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**COMMENTS OF NESTLÉ WATERS NORTH AMERICA INC.  
ON NOTICE OF PROPOSED ACTION  
AND  
EXPRESS TERMS**

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July 21, 2003

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**COMMENTS OF NESTLÉ WATERS NORTH AMERICA INC.  
ON  
NOTICE OF PROPOSED ACTION  
AND  
“EXPRESS TERMS”**

As directed in the Notice of Renewables Committee Workshop to Consider Cost Responsibility Surcharge Regulations, Nestlé Waters North America Inc. (Nestlé Waters) submits these comments on the Notice of Proposed Action and the Express Terms circulated on July 9, 2003 (“proposed regulations”). These comments supplement the oral comments provided by Steven McClary of MRW and Associates, Inc. on behalf of Nestlé Waters in the course of the July 16, 2003 workshop.

Nestlé Waters’ comments focus on three main areas: (i) the role of the utilities in collecting and defining exemption-related data; (ii) consistency between the Commission and CPUC in tracking and allocating exemptions and partial exemptions from departing load exit fees; and (iii) the need to provide a clear initial definition of the extent to which quotas for exemptions are already allocated. In addition, clarifications to the text of the Express Terms are provided.

**I. The Commission should take the lead role in collecting data and defining exemptions. If the utilities are given a lead role, they should be carefully monitored, and appeal procedures adopted as early as possible.**

The proposed regulations rely on the utilities that serve potential departing load performing the initial collection of data related to the nature and size of departing load. In addition, the utilities are tasked with the preliminary identification of the type of exemption to which the departing load is entitled.

This process puts undue faith in administration by the utilities, which are the parties losing load through the development of new customer generation. The serving utility has the incentive to delay or forestall the departure of the load served by new customer generation. Leaving the serving utility in the lead role invites disputes over data collection, load characterization, and exemption status. Such a prospect in turn may act to discourage investment in new customer generation.

The utilities are familiar with the impact of departing loads of their systems; there are advantages to their participation. However, involvement by the Commission as a third party “neutral referee” would enhance customer faith in the process. A better approach would be to have prospective departing load customers file necessary data directly with the Commission, with a copy of all data provided to the utility at the same time. Classification

of load as to the degree and type of exemption from CRS would also be performed by the Commission.

Simultaneous provision of information to the serving utility would allow the utility to remain aware of changing load conditions on the utility's system. If the serving utility believes the prospective departing load customer is incorrectly characterizing the departing load, it will have adequate information to permit it to file an exception with the Commission.

Alternatively, if the Commission is unable to administer the filing process as outlined above, simultaneous filing of information with the Commission and the utility will still serve a useful purpose by letting the Commission serve as a "neutral observer" in the filing process with the utility.

**2. The Commission should conform the definitions of Customer Generation, Departing Load, and Interconnection to the definitions adopted by the CPUC in the D.03-04-030.**

The departing load decision (D.03-04-030) is the result of a long process of attempted settlement and hearings before the CPUC. It is based in a substantial body of previously considered material and testimony by the CPUC, the Legislature, the Commission and affected stakeholders on issues such as the nature of departing load, definition of customer generation, and the interconnection criteria that qualify a party for exemption from standby

service or competition transition charges. In most respects, the proposed regulations attempt to conform closely to the language of D.03-04-030. In some respects, however, the proposed regulations depart from the decision or from existing precedent. This should be avoided wherever possible, to avoid confusion or ambiguity that can lead to unproductive disputes or poor investment decisions.

Three examples are noted below:

1. *Customer Generation* – The definition included in the proposed regulations at Section 1395.1 (k) differs from that in D.03-04-030 by eliminating several qualifying or clarifying phrases.
2. *Departing Load* –The definition of Departing Load in the proposed regulations at Section 1395.1 (l) refers to the definition in D.03-04-030. However, the proposed regulations subsequently refer to departing load and customer generation almost interchangeably. For example, at Section 1395.2 (c) (1), the proposed regulations refer to “CRS Exemption request that is considered Backup Generation or diesel-fired customer generation,” when the CRS Exemption request would actually refer to the departing load *served* by such generation. CRS fees are assessed on load, not on generation, and the Commission regulations should be amended to reflect that the intent is to track the level of departing load served by customer generation. This seemingly minor point can become important for two reasons. First, customer generation may well exceed the departing load eligible for CRS exemption. For example, a 40 MW project might serve 20 MW of departing load, with the

remainder of the project output sold to a utility or wholesale buyer. The regulations must be clear that in such a case only 20 MW of exemption rights are being counted against the MW Cap, not the full 40 MW.

Second, as discussed at the workshop the quantification of Departing Load remains uncertain. Some parties suggest that an appropriate definition be based on historical average usage for departing loads that have historic data. For new loads, a projected annual average usage might be the best measure. In neither case would the actual departing load be tied intrinsically to the generating characteristics of a particular customer generation project.

3. *Interconnection Criteria* – At the July 16 workshop SCE distributed proposed forms for implementing the data collection and categorization of departing load. Included in the proposed forms are queries regarding the intended interconnection mode for a Customer Generation project (see proposed SCE "Application for Customer Generating Facility Tariff Exemptions", Part 3B). The status of a customer's interconnection to the utility grid is often a complex and contentious issue, and can affect tariff charges, quality of service, applicability of standby and other charges, and costs to be allocated between the customer and the utility. The commission should be cautious about approving utility-proposed language for the CRS exemption process that could conflict with or confuse other unrelated issues. In this case, the utility should at the least be required to demonstrate the need for such information and explain how it will be used for the CRS exemption process.

As the workshop discussions showed, there are differing interpretations of many of the terms and procedures laid out in D.03-04-030. The goal in this proceeding should be to at a minimum avoid adding to any confusion or uncertainty that might remain. Nestlé Waters therefore suggests that Section 1395.1 be amended to specify that where differences occur between the definitions in Section 1395.1 and terms used in D.03-04-030, the definition used in the CPUC decision will prevail.

**2. The regulations should clarify that “grandfathered” Departing Load will not count against the Megawatt Cap, and the Commission should act now to clarify the potential status of the Cap prior to adoption of the regulations**

As is clear from the discussion at both the June and July workshops, many potential customer generators are faced with investment decisions today even though the proposed regulations are not likely to take effect until the end of the year. Those customers are faced with uncertainty over the extent to which the limits in the “MW Cap” specified by D.03-04-030 may already have been approached. The Commission can and should act to reduce this uncertainty to the extent possible.

An example is the issue of whether “grandfathered load” as defined in D.03-04-030 will count against the MW Cap. Parties have raised this issue in workshops, and it appears that the Commission can perform a helpful role in confirming that such load will not be counted against the cap. This would have the helpful effect of providing some additional clarity regarding the status of the cap today, by at least making it clear that grandfathered

load is not already cutting into the amount of exemption rights available to potential developers of customer generation.

In the same vein, the Commission should consider acting to provide some clarification of the likely status of the cap prior to adoption of the proposed regulations. The Commission could achieve this by undertaking now to perform a “preliminary assessment” of the status of the exemption cap, with parties understanding that such an assessment can not be made final until the regulations are adopted. Such an approach could also give the Commission the opportunity to perform a “trial run” of the data collection procedures to be adopted via the regulations.

Such a preliminary assessment would not have the force of the ultimately adopted regulations. However, it could give the Commission and affected parties an indication of the possible extent to which the MW Cap has already been impacted. This would at least reduce the uncertainty over exemption availability pending the full detail and effect of the Commission’s final tracking procedures.

### **3. Clarifications to the text of the Express Terms.**

The comments noted below are suggested as clarifications to the text of the Express Terms as published on July 9, 2003. they are not intended to be exhaustive and may be superseded by changes consistent with the broader comments above.



*Section 1395.1 (g) (1):* Change wording to “Costs associated with the procurement of power by Southern California Edison recovered through the Historic Procurement Charge”

*Section 1395.1 (i):* Delete the words “pending final determination of eligibility” from the end of the last sentence.

*Section 1395.1 (o):* Change wording to: “full CRS Exemption” means that customers are excluded from paying the CRS-related surcharges associated listed in subsection (g) of this section.”

*Section 1395.2 (c) (1):* Change wording to: “the commission shall deny any CRS Exemption request for load served by Backup Generation or diesel-fired generation, consistent with CPUC D.03-04-030.”

Nestlé Waters appreciates the opportunity to participate in the Commission’s development of the proposed regulations, and looks forward to continued discussion with the Committee, Commission staff and stakeholders as the process continues.

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Respectfully submitted,

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